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7 ELIZABETH WEISS,
8 Plaintiff,
9 v.
10 STEPHEN PEREZ, et al.,
11 Defendants.

Case No. 22-cv-00641-BLF

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**ORDER GRANTING MOTION TO
DISMISS AS TO DEFENDANTS
SUNSERI AND RAGLAND AND
DENYING MOTION TO DISMISS AS
TO ALL OTHER DEFENDANTS**

In this case, Elizabeth Weiss, a tenured professor of physical anthropology at San Jose State University, alleges that the University has retaliated against her for her speech expressing opposition to repatriation of Native American remains. Weiss brings two claims under 42 U.S.C. § 1983 for violation of her First Amendment rights.

Now before the Court is Defendants' motion to dismiss. MTD, ECF No. 87; Reply, ECF No. 90. Plaintiff opposes the motion. Opp., ECF No. 88. The Court held a hearing on this motion on October 13, 2022. *See* ECF No. 100. The Court finds that Plaintiff has stated a claim for relief, but two of the Defendants are improper. Accordingly, Defendants' motion to dismiss is GRANTED as to Defendants Sunseri and Ragland and DENIED as to all other Defendants.

22 **I. BACKGROUND**

23 **A. Weiss and Her Controversial Views on Repatriation**

Weiss is a tenured professor of physical anthropology at San Jose State University (the "University") where she specializes in osteology, the study of human skeletal remains. FAC, ECF No. 82 ¶ 19. Weiss is a critic of repatriation, which is a process through which Native American remains and cultural items are returned to tribes. *Id.* ¶ 21. In 2020, she published a book titled "Repatriation and Erasing the Past," which criticizes federal and state laws that require universities

1 and museums to return Native American remains to tribes. *Id.*; see 25 U.S.C. §§ 3001–3013
2 (Native American Graves Protection and Repatriation Act or “NAGPRA”); Cal. Health & Safety
3 Code §§ 8010–8030 (California Native American Graves Protection and Repatriation Act or
4 “CalNAGPRA”). She argues in the book that these laws “undermine objective scientific inquiry
5 and violate the Establishment Clause of the United States Constitution by favoring religion over
6 science.” *Id.* The book generated significant criticism, with about a thousand professors and
7 graduate students signing an open letter calling the book “anti-indigenous” and “racist.” *Id.* ¶ 22.

8 Weiss also authored an op-ed and tweet that received criticism. FAC ¶¶ 62-71. On August
9 31, 2021, she published an op-ed in The Mercury News and The East Bay Times outlining her
10 critique of AB 275, which amended CalNAGPRA. *Id.* ¶ 62. After the op-ed was published, the
11 University received “vitriolic emails” from academics and the public demanding discipline. *Id.*
12 On September 18, 2021, Weiss posted a tweet to her Twitter account stating, “So happy to be back
13 with some old friends” and including a photo of her holding a skull from the University’s
14 collection. *Id.* ¶ 64. Weiss alleges that other anthropologists and journalists, as well as the
15 Anthropology Department, had posted similar pictures in the past. *Id.* ¶ 65. The tweet sparked
16 substantial criticism. Eleven days later, Defendant Del Casino published an open letter addressing
17 the tweet, *id.* ¶ 68, and in November 2021, Defendant Gonzalez posted a statement on the
18 Department website, *id.* ¶ 71.

19 Weiss alleges that she has made these repatriation arguments for several years without
20 controversy at the University. FAC ¶ 23. She asserts that Defendants Gonzalez and Jacobs
21 encouraged her to write her book as it would spark “lively discussions.” *Id.* Weiss alleges that
22 following publication of her book, “Defendants responded with escalating scrutiny of her work,
23 culminating in threats and retaliatory actions.” *Id.* ¶ 24. She names several Defendants in their
24 official capacities: Stephen Perez (Interim President), Vincent J. Del Casino (Provost), Walt
25 Jacobs (Dean of the College of Social Sciences), Roberto Gonzalez (Chair of the Department of
26 Anthropology), Charlotte Sunseri (NAGPRA Coordinator), and Alisha Marie Ragland (Tribal
27 Liaison). *Id.* ¶¶ 12-18.

B. Alleged Retaliatory Actions

Weiss alleges that the University began a campaign of retaliation against her following her book's publication. She first points to a public meeting held by the University on December 3, 2020 to discuss the possibility of starting a Native and American Indian studies program. FAC ¶ 26. Weiss alleges that during the Q&A portion, she disagreed with panelists who advocated for having only Native American persons working in the program. *Id.* ¶ 27. She claims that on December 11, 2020, she received an email from Gonzalez asking her to speak on the phone, and, on the phone, he allegedly "told her that she should not participate in events like this again or share her views because her views may harm the feelings of junior faculty members." *Id.* ¶ 28.

Weiss next alleges that she was denied access to the Anthropology Department ListServ (the "Listserv"). FAC ¶¶ 29-39. In December 2020, Weiss responded to a Listserv email sharing the "Cite Black Authors" database claiming that because she looks for "objective knowledge," she would "encourage researchers to look for the best source material and realize that an author's ethnicity, race, or color of their skin has no actual bearing on the validity of their contribution." *Id.* ¶ 32. Soon thereafter she sent another email to the Listserv in response to the above-mentioned open letter, claiming her book was not racist. *Id.* ¶ 34. Later that day Gonzalez emailed Weiss to state it was not "appropriate to use the departmental listserv for this purpose" and that her email could "undermine the hard work" that went into creating the Listserv as an "online communication and networking infrastructure." *Id.* ¶ 35. Two days later, Gonzalez restricted Listserv access so that only he and one other professor could send emails. *Id.* ¶ 36. Weiss alleges that restriction of Listserv use was "retaliation for [her] decision to express her views on the Cite Black Authors email and to defend her book." *Id.* ¶ 38.

Weiss next claims she was improperly denied sponsorship for a speaker series. FAC ¶¶ 40-52. She alleges she emailed Gonzalez proposing an event called "Combating Cancel Culture: Why Diversity of Thought Still Matters." *Id.* ¶ 43. She wanted department sponsorship to receive benefits such as the departmental Zoom account, Listserv advertising, RSVP tracking, and a speaker honorarium. *Id.* Gonzalez declined, stating he could not commit funding or staff as there had already been a speaker series that semester. *Id.* ¶¶ 41-42, 44. Weiss claims that when she

1 offered to hold it a different semester, Gonzalez responded that she would need to comply with the
2 Dean's Office guidelines for speaker series sponsorships. *Id.* ¶ 45. She claims that this was
3 "pretext" to reject her event, as the guidelines were not enforced for a speaker series earlier that
4 semester. *Id.* ¶¶ 46, 48. She informed Jacobs that she was upset the guidelines were selectively
5 enforced and he reached out to Gonzalez. *Id.* ¶¶ 48-49. The Anthropology Department Standing
6 Committee then adopted a policy whereby faculty may invite speakers and reserve space without
7 sponsorship, but a request for sponsorship and staff assistance would require a departmental vote.
8 *Id.* ¶ 50. There is no allegation that Weiss submitted her proposed series for a vote. *See* FAC.

9 Next, in June 2021, Jacobs hosted a Zoom webinar entitled "What to Do When a Tenured
10 Professor is Branded a Racist." FAC ¶ 53. Gonzalez allegedly implied at the event that he would
11 take adverse action against Weiss if she was not tenured and suggested she was "professionally
12 incompetent." *Id.* ¶ 54. He allegedly further stated that Weiss had never talked about her writing
13 in the classroom and that if she did, he would "have a very different approach to this." *Id.* ¶ 55.
14 Weiss claims she "has long taught about repatriation in her classes and plans to continue to do so."
15 *Id.* ¶ 56. She alleges that students have started to voice complaints about the views she expresses
16 in class. *Id.* ¶ 57. After the Zoom event, Weiss requested a letter from Gonzalez and Jacobs
17 assuring her that she would be allowed to assign her book, speak about her research in class, and
18 access skeletal remains for research purposes. *Id.* ¶ 59. Jacobs told her that Del Casino and the
19 Office of Faculty Affairs would not let him provide her a letter. *Id.* Jacobs further said that
20 Gonzalez would not retract his statements and that Jacobs was receiving pressure from others to
21 take action against her. *Id.* Counsel for Weiss then sent a letter to Del Casino, Jacobs, and
22 Gonzalez warning of potential legal action. *Id.* ¶ 60. Weiss also thinks Gonzalez will take further
23 action if she continues teaching her views on repatriation, such as "putting forward additional
24 resolutions targeting her and enacting policies that limit her freedom in the classroom." *Id.* ¶ 61.

25 Weiss further asserts that she has lost access to the curation facility and lost some of her
26 duties. FAC ¶¶ 72-82. Weiss has been the Collections Coordinator for the University's skeletal
27 remains since 2004. *Id.* ¶ 72. This role involves "establishing protocols for and facilitating
28 research of [the University's] extensive collection of skeletal remains." *Id.* ¶ 73. On October 6,

1 2021, the University announced Interim Presidential Directive PD-2021-03, entitled “San Jose
2 State University’s Interim Protocol for Curation Spaces in Alignment with NAGPRA,
3 CalNAGPRA, AB275” (the “Directive”). *Id.* ¶¶ 76–77. The Directive has four provisions
4 governing the University’s Collections:

- 5 • The curation spaces at SJSU that house the Collections will be
6 exclusively managed by the SJSU NAGPRA Coordinator and the
SJSU Tribal Liaison, supplemented by student assistants who are
appropriately trained and supervised to assist with the inventory
process.
- 8 • The Collections will continue to remain in a locked, secure area on
campus, and all access will be overseen by the SJSU NAGPRA
Coordinator and the SJSU Tribal Liaison.
- 10 • Any physical access to or use of the Collections, including for
research or teaching, will require written approval of the NAGPRA
Coordinator and Tribal Liaison.
- 12 • Audio, video, or photographic devices are prohibited in the curation
spaces, as is taking photo images or videos of human remains,
funerary objects, or the boxes in which these materials are held.

14 *Id.* ¶ 77. On January 18, 2022, the University adopted an updated interim directive that allegedly
15 indicates that research on the NAGPRA collection is not permitted. *Id.* ¶ 78. Weiss alleges that
16 she is the University’s only faculty member who regularly accesses skeletal remains for research.
17 *Id.* ¶ 79. She claims that the Directive “cuts [her] out of her contractually assigned leadership
18 responsibilities for the collection and impedes her research.” *Id.* ¶ 80. Since the Directive went
19 into place, she alleges she “has been locked out of the curatorial facility that she is supposed to
20 manage.” *Id.* She asserts that Defendants limited her access to remains that are not covered by
21 NAGPRA/CalNAGPRA, which demonstrates a “retaliatory motive.” *Id.* ¶ 81; *see also* ¶¶ 83-88.
22 She claims she temporarily could not access some non-NAGPRA materials, and she believes there
23 are additional non-NAGPRA materials to which she is not getting access. *Id.* ¶¶ 104, 112-117.

24 Weiss discusses a November 5, 2021 Anthropology Department Standing Committee
25 meeting, at which Gonzalez allegedly proposed several changes to research protocols. FAC ¶¶ 89-
26 103. First, he allegedly suggested that the role of Collections Coordinator be restructured so the
27 coordinator would be responsible for the non-NAGPRA collection while Sunseri would be
28 responsible for the NAGPRA collection, and that the role rotate among Department professors.

1 *Id.* ¶ 91. Weiss objected, and Gonzalez tabled the proposal. *Id.* ¶ 92. Next, Gonzalez allegedly
2 proposed banning photography of all remains in the laboratory, and Weiss objected, claiming it
3 would be detrimental to her research. *Id.* ¶¶ 93-96. They continued discussing, with Gonzalez
4 and Weiss each suggesting different proposals. *Id.* ¶¶ 97-99. Gonzalez told Weiss he planned to
5 put the two proposals up for a faculty vote, but he then sent an email on November 19, 2021
6 stating that he would postpone the vote. *Id.* ¶¶ 100-102.

7 Weiss also claims that Defendants retaliated by limiting where she could access the
8 Carthage Collection. FAC ¶¶ 104-111. She claims she could not access the curatorial facility and
9 had to use two classrooms that were “inadequate.” *Id.* ¶ 105. One room is inaccessible while
10 classes are in session. *Id.* ¶ 106. The other is the research laboratory, and she claims Department
11 policy says remains should not stay there “for safety and security reasons.” *Id.* ¶ 107. She also
12 alleges the remains are poorly stored and organized in this location. *Id.* ¶ 108. Weiss claims that
13 Gonzalez said he would “find a more appropriate destination for the remains,” but on May 5,
14 2022, he said he could not find any other location on campus. *Id.* ¶¶ 110-111.

15 Weiss expresses concern about a new Office of Research Compliance (“ORC”) policy.
16 FAC ¶¶ 118-124. She claims that after issuing the Directive, the University began applying its
17 ORC research approval process to human remains research. *Id.* ¶ 119. She asserts that this policy,
18 which would require her to request approval early in the research process, was applied to “human
19 remains research . . . in retaliation for [her] speech and in order to exercise greater control over her
20 research.” *Id.* ¶¶ 120-124. There are no allegations that Weiss has submitted a proposal to ORC.
21 *See* FAC.

22 Weiss asserts that she has lost curatorial responsibilities and her academic standing. FAC
23 ¶¶ 125-131. She alleges that she has lost her duties as Collections Coordinator, and she can no
24 longer “exercise her leadership role in facilitating and coordinating access to the University’s
25 collection of remains.” *Id.* ¶¶ 125-126. She says that losing access to the facility and thus her
26 responsibilities has “harmed [her] standing and reputation among her peers.” *Id.* ¶ 129.

27 Finally, Weiss alleges she was improperly denied placement on a thesis committee. FAC
28 ¶¶ 132-140. She claims that there was a Department “policy” that Weiss would sit on thesis

1 committees for research involving bones. *Id.* ¶ 133. She claims that she was not assigned to sit on
2 the committee for a graduate student whose research involved human bones. *Id.* ¶ 135. Gonzalez
3 told her it was because the student did not request her. *Id.* ¶ 136. Weiss claims that she should
4 have been assigned even if the student had not requested her, but she was not because of her views
5 on repatriation. *Id.* ¶¶ 137-139. She says that she thinks she will be denied placement on thesis
6 committees in the future, which would hurt her professional standing and reputation. *Id.* ¶ 140.

7 C. This Lawsuit

8 On January 31, 2022, Weiss filed a lawsuit against Stephen, Ragland, Del Casino, Jacobs,
9 Gonzalez, and Sunseri. *See* ECF No. 1. Weiss immediately filed a motion for a preliminary
10 injunction, *see* ECF No. 8, and Defendants filed a motion to dismiss, *see* ECF No. 31. The Court
11 granted the motion to dismiss with leave to amend in part and denied the motion for preliminary
12 injunction. ECF No. 78.

13 On June 9, 2022, Weiss filed the First Amended Complaint. *See* FAC. She again brings
14 two claims under 42 U.S.C. § 1983—the first for retaliation in violation of her First Amendment
15 Right to Freedom of Speech, *see id.* ¶¶ 141-151; and the second for violation of her First
16 Amendment Right to be Free from Unconstitutional Conditions, *see id.* ¶¶ 152–156. In her
17 retaliation claim, Weiss identifies eight alleged adverse employment actions. *Id.* ¶ 145. On July
18 6, 2022, Defendants filed a motion to dismiss. *See* MTD.

19 II. ANALYSIS

20 Defendants' motion to dismiss raises four arguments. *See* MTD. First, Defendants argue
21 the case must be dismissed under Rule 12(b)(7) for failure to join a required party. *Id.* at 6-14.
22 Second, they argue the case should be dismissed under Rule 12(b)(1) because Weiss lacks
23 standing for her requested relief. *Id.* at 14-18. Third, Defendants argue Weiss fails to state a claim
24 under Rule 12(b)(6). *Id.* at 18-24. Fourth, Defendants argue that all claims should be dismissed as
25 to Defendants Sunseri and Ragland. *Id.* at 24-25.

26 A. Rule 12(b)(6) – Failure to State a Claim

27 “*A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a
28 claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’” Conservation*

1 *Force v. Salazar*, 646 F.3d 1240, 1241-42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d
2 729, 732 (9th Cir. 2001)). When determining whether a claim has been stated, the Court accepts
3 as true all well-pled factual allegations and construes them in the light most favorable to the
4 plaintiff. *Reese v. BP Expl. (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011). But the Court need
5 not “accept as true allegations that contradict matters properly subject to judicial notice” or
6 “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
7 inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (internal quotation
8 marks and citation omitted). While a complaint need not contain detailed factual allegations, it
9 “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible
10 on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,
11 550 U.S. 544, 570 (2007)). A claim is facially plausible when it “allows the court to draw the
12 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* On a motion to
13 dismiss, the Court’s review is limited to the face of the complaint and matters judicially
14 noticeable. *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986); *N. Star Int’l v.
15 Ariz. Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir. 1983).

16 Defendants’ arguments under Rule 12(b)(6) focus on Weiss’s retaliation claim. “[T]o state
17 a claim against a government employer for violation of the First Amendment, an employee must
18 show (1) that he or she engaged in protected speech; (2) that the employer took ‘adverse
19 employment action’; and (3) that his or her speech was a ‘substantial or motivating factor’ for the
20 adverse employment action.” *Turner v. City & Cnty. of S.F.*, 788 F.3d 1206, 1210 (9th Cir. 2015)
21 (quoting *Coszalter v. City of Salem*, 320 F.3d 968, 973 (9th Cir. 2003)). Defendants argue that
22 three of Plaintiff’s alleged adverse employment actions—curtailing her duties as Collections
23 Coordinator, restricting access to certain remains, and storing her materials in an “inferior”
24 space—were not actually adverse. MTD at 19-20. Defendants also argue that Weiss has not
25 shown that her speech was a “substantial or motivating factor” for those actions or three others—
26 limiting her Listserv access, requiring ORC approval of her research, and not assigning her to a
27 thesis committee. MTD at 20-24.

28 An adverse employment action is an action taken by an employer that is “reasonably likely

1 to deter employees from engaging in protected activity [under the First Amendment].” *Coszalter*,
2 320 F.3d at 976 (quoting *Ray v. Henderson*, 217 F.3d 1234, 1243 (9th Cir. 2000)). The Ninth
3 Circuit found that actions including a change in duties, “repeated and ongoing verbal harassment
4 and humiliation,” threatened disciplinary action, and “an unpleasant work assignment,” among an
5 unwarranted disciplinary investigation and action, a criminal investigation, and a ten-day
6 suspension from work, constituted “a severe and sustained campaign of employer retaliation.” *Id.*
7 at 976-77. It more recently determined there was retaliation based on the employer’s “defamatory
8 communications with the press” in combination with a suspension, indefinite leave, a “one-sided
9 gag order,” and several “spurious” investigations. *Greisen v. Hanken*, 925 F.3d 1097, 1114 (9th
10 Cir. 2019). Here, Weiss’s allegations include at least some of the less severe allegations identified
11 in these lists. The Court finds that, taking all allegations in the FAC as true, it is at least plausible
12 that the University’s actions would be reasonably likely to deter an employee from engaging in
13 protected speech.

14 Next, there are three ways to show that speech was a “substantial or motivating factor” for
15 an adverse employment action: (1) proximity in time between the protected action and the adverse
16 employment action; (2) expression of opposition to speech; or (3) false and pretextual
17 explanations for the adverse employment action. *See Keyser v. Sacramento City Unified Sch. Dist.*, 265 F.3d 741, 751-52 (9th Cir. 2001). Here, the proximity in time between Plaintiffs’ book
18 publication, op-ed, and tweet, among other things, and the alleged adverse employment actions is
19 sufficient to plead that the speech was a “substantial or motivating factor” in the University taking
20 those actions. There may ultimately be other, justifiable explanations for the University’s actions,
21 such as the requirement to comply with NAGPRA and CalNAGPRA, but at the motion to dismiss,
22 the Court looks only at whether there is a plausible inference that the actions were the result of
23 Weiss’s speech and, given the proximity in time, it finds that there is. Weiss has thus adequately
24 alleged that her speech was a “substantial or motivating factor” in the University’s actions.

25 Defendants focus their arguments on specific adverse employment actions alleged by
26 Weiss. On a motion to dismiss, the Court looks at the allegations collectively to see if Plaintiff
27 has stated a claim. *See Coszalter*, 320 F.3d at 977 (holding that acts “taken together” constituted
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1 retaliation). Defendants do not bring a motion to strike any of the allegations. Despite some of
2 the weaknesses with individual alleged actions identified by Defendants, *see* MTD at 19-24, the
3 Court finds that the allegations considered as a whole are sufficient to state a claim for relief.

4 **B. Rule 12(b)(7) – Failure to Join a Required Party**

5 A party may move under Federal Rule of Civil Procedure 12(b)(7) to dismiss a claim for
6 “failure to join a party under Rule 19.” Rule 19 governs the joinder of “required” parties.” Courts
7 engage in a three-step process to determine whether claims must be dismissed due to the absence
8 of a required party. First, the Court must determine if the party is a “necessary” party under Rule
9 19(a).¹ *Salt River Project Agr. Imp. & Power Dist. v. Lee*, 672 F.3d 1176, 1179 (9th Cir. 2012).
10 Second, if so, the Court must decide whether it is feasible to order joinder of the necessary party.
11 *Id.* Finally, if joinder is not feasible, the Court must evaluate if the absent party is “indispensable”
12 under Rule 19(b), or whether “in equity and in good conscience” the claims can proceed without
13 the party. *Id.* “In order to determine whether Rule 19 requires the joinder of additional parties,
14 the court may consider evidence outside of the pleadings.” *Hammons v. Wells Fargo Bank, N.A.*,
15 No. 15-cv-04897-RS, 2015 WL 9258092, at *7 (N.D. Cal. Dec. 18, 2015).

16 Defendants argue that the Court should dismiss the suit because the Muwekma Ohlone
17 Tribe (the “Tribe”) is a necessary and indispensable party for which joinder is not feasible. MTD
18 at 6-14. The Court previously determined that the Tribe is a necessary and indispensable party for
19 all claims related to the proper interpretation of CalNAGPRA, the Directive, and its
20 implementation. *See Weiss v. Perez*, No. 22-cv-00641-BLF, 2022 WL 1471453, at *12 (N.D. Cal.
21 May 10, 2022). Again, Defendants did not move to strike any specific allegations of adverse
22 employment actions or any requested injunctive relief. But to the extent that any of Defendants’
23 alleged actions are mandated by the Directive, or any of the requested injunctive relief would
24 require a change to the Directive or require this Court to interpret the scope of CalNAGPRA, the
25 Tribe would be a necessary and indispensable party, and the Court will not find retaliation on that

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27 ¹ Rule 19 used the terms “necessary” and “indispensable” prior to amendments in 2007. These
28 changes were “stylistic only,” so pre-2007 precedents still apply. *Republic of Phil. v. Pimentel*,
553 U.S. 851, 855 (2008). The Court uses the terms “necessary” and “indispensable” in light of
those precedents.

1 basis or grant the requested relief. However, at this stage the Court finds the claims plausible
2 without consideration of aspects of the claims that would require the unattainable Tribal
3 participation in this suit.

4 **C. Rule 12(b)(1) – Standing**

5 “[T]he ‘irreducible constitutional minimum’ of standing consists of three elements.”
6 *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555,
7 560 (1992)). “The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to
8 the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable
9 judicial decision.” *Id.* “The plaintiff, as the party invoking federal jurisdiction, bears the burden
10 of establishing these elements.” *Id.* A plaintiff “must allege facts sufficient to show a ‘real and
11 immediate threat of repeated injury’ in order to seek injunctive relief in federal court.” *Freeman v.*
12 *ABC Legal Servs., Inc.*, 877 F. Supp. 2d 919, 926 (N.D. Cal. 2012) (quoting *O’Shea v. Littleton*,
13 414 U.S. 488, 496 (1974)).

14 Defendants argue that Weiss does not have standing for much of her requested injunctive
15 relief. MTD at 14-18. They identify five of Weiss’ requests for injunctive relief and argue that
16 she “has not alleged facts suggesting she is ‘likely’ to suffer any of these injuries”: (1) changing
17 the conditions of her employment, (2) barring her from photography, (3) requiring a change in
18 course content, (4) requiring departmental approval for her speaker series, and (5) barring her from
19 thesis committees. *Id.* at 15.

20 Weiss alleges that Defendants will limit and restrict her ability to host a speaker series, to
21 teach her views on repatriation, to take photographs for her research, to access an adequate
22 research space, to conduct her research in a timely fashion, to carry out her duties, and to sit on
23 thesis committees. FAC ¶¶ 52, 61, 103, 111, 122-124, 126, 139. The Court must take these
24 allegations as true at this stage. The Court finds that, if true, these allegations constitute a “real
25 and immediate threat of repeated injury.” Defendants have not moved to strike any of the
26 requested injunctive relief. If the point comes for the Court to fashion injunctive relief, it will then
27 determine whether each request is proper.

1 **D. Proper Defendants**

2 Finally, Defendants Sunseri and Ragland argue that they should be dismissed from the
3 action. MTD at 24-25. The Court agrees. In bringing a claim against a government official in
4 their official capacity, a plaintiff must “name the official within the [government] entity who can
5 appropriately respond to injunctive relief.” *Hartmann v. Cal. Dep’t of Corr. & Rehab.*, 707 F.3d
6 1114, 1127 (9th Cir. 2013). A plaintiff should name “the ‘most appropriate’ defendant to execute
7 court-ordered injunctive relief” and defendants who “would have the authority to ensure execution
8 of any order issued.” *Id.* If certain defendants “are not in a position to appropriately respond to
9 Plaintiff’s requests for injunctive relief, the official capacity claims against them should be
10 dismissed.” *Balzarini v. Diaz*, No. 5:18-cv-01962-RGK (MAA), 2021 WL 6845545, at *15 (C.D.
11 Cal. Dec. 16, 2021) (citing *Hartmann*, 707 F.3d at 1127).

12 Weiss sues Defendants Sunseri and Ragland in their official capacities as NAGPRA
13 Coordinator and Tribal Liaison, respectively. The Court finds that these individual defendants are
14 duplicative of the other named individual defendants, who include the Interim President, Provost,
15 Dean, and Department Chair. There are no allegations that Defendants Sunseri and Ragland are
16 policymakers or can alter the conditions of Plaintiff’s employment. The Court therefore GRANTS
17 the motion to dismiss with respect to Defendants Sunseri and Ragland.

18 **III. ORDER**

19 For the foregoing reasons, IT IS HEREBY ORDERED that Defendants’ motion to dismiss
20 is GRANTED as to Defendants Sunseri and Ragland and DENIED as to all other Defendants.

21 Dated: October 19, 2022



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23 BETH LABSON FREEMAN
24 United States District Judge
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